

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2465 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?  
Nos 1 to 5 No.
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SABARKANTHA GENERAL MAZDOOR UNION

Versus

SABARKANTHA DIST CO.OPERATIVE MILK PRODUCERS UNION

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Appearance:

MR DJ BHATT for Petitioner

MR KG VAKHARIA, SENIOR ADVOCATE WITH MR TUSHAR MEHTA  
for Respondent No. 1

MR KN SHASTRI WITH DA BAMBHANIA for Respondent No. 2

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 17/04/97

ORAL JUDGEMENT

Heard learned counsel.

Rule had been issued in this case on 1.4.1997.  
The matter came up today for consideration of the interim

relief. Having heard both the sides at length I find that this matter deserves to be decided right today.

This Special Civil Application has been filed against the interim order dated 10.3.1997 passed by the Industrial Tribunal rejecting the petitioner's application for allowing him to continue till the age of 58 years. The case of the petitioner is that in the appointment order retirement age was mentioned as 58 years and thereafter it was made 60 years vide order dated 12.5.1981. The orders concerning Chandubhai S.Patel dated 16.5.1979 and 12.5.1981 have been placed on record. The controversy is as to whether the workman should be retired in terms of the Model Standing Order No.27 or on the basis of the settlement which had been subsequently arrived at between the Union and the Management. However, the workman was retired at the age of 55 years on the basis of the settlement. The contention which is sought to be raised on behalf of the union is that the age of 60 years mentioned in the Model Standing Order No.27 must prevail. The learned Counsel for the petitioner union further contended that despite the mention made in the standing orders that the age of superannuation of the workman may be 60 years or such other age as may be agreed upon between the employer and the workman by any agreement the settlement or award which may be binding on the employer and the workman under any law for the time being in force, mention of 60 years in the Model Standing Order No.60 must prevail, because, the settlement on the basis of which he has been retired in February, 1997, has not been certified in accordance with the procedure prescribed under sections 3, 4 and 5 of the Industrial Employment (Standing Orders) Act. The learned counsel for the petitioner has also placed strong reliance on 1991 Labour and Industrial Cases, Page 2066 at page 2069.

Mr.Vakharia, learned Counsel appearing for respondent No.1 has pointed out that the matter is yet pending before the Industrial Tribunal. The tribunal is seized of this controversy and at the time when the impugned order rejecting the petitioner's application was passed on 10.3.1997, the workman had already retired and had ceased to work and he was allowed to continue on the basis of ex parte Ad-interim order but the application for interim relief was rejected by the Industrial Tribunal. It has been further pointed out by Mr.Vakharia that the matter is now fixed before the Industrial Tribunal after the summer vacation of the Industrial Tribunal are over.

Having considered the matter in its entirety, I

find that it would not be appropriate to express any opinion about the merits of the case, at this stage while Industrial Tribunal is ceased of the controversy. The workman may get the benefit of all his wages etc., in case he ultimately succeeds. At the same time, I find it appropriate and expedient to direct the Industrial Tribunal to decide the main reference within a period of six months from the next date of hearing which is fixed before the Industrial Tribunal and in any case, the reference may be finally decided on or before 31.12.1997 in accordance with law and without being influenced by anything which is mentioned in the impugned order dated 10.3.1997.

In the facts and circumstances of this case, I find that the direction as aforesaid would serve the ends of justice and no further orders are required to be passed. This Special Civil Application is disposed of accordingly and the Rule is hereby discharged.

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